

88-1601

MAR 20 1984

ALEXANDER L. STEVENS
CLERK

SUPREME COURT OF THE UNITED STATES

TERM COMMENCING OCTOBER 1983

WERNER MEYER

PETITIONER

V.

COMMISSIONER OF INTERNAL REVENUE

RESPONDENT

ON APPLICATION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

PETITION FOR CERTIORARI

WERNER MEYER, PRO SE

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QUESTION PRESENTED FOR REVIEW

Was denial of a jury trial to
Petitioner Werner Meyer by the United
States Tax Court with subsequent affir-
mance by the United States Court of
Appeals for the Third Circuit a violation
of his constitutional rights under the
Fifth, Seventh and Tenth Amendments to
the United States Constitution?

PARTIES TO THE PROCEEDING BELOW

Werner Meyer, Petitioner - Appellant
Commissioner of Internal Revenue,
Respondent - Appellee

TABLE OF CONTENTS

Table of Authorities	1
Opinions of Lower Courts	3
Jurisdictional Statement	3
Constitutional Foundation	4
Statement of the Case	5
Argument	9
Overview	9
Constitutional Principles	9
All Rights Asserted	12
Past Precedents and Case Law	13
Conclusions	24
Appendix	A-1
Judgment Order	A-1
Memorandum Findings of Fact and Opinion	A-3
Decision	A-5
Judgment Under Review	A-6

TABLE OF AUTHORITIES

United States Constitution

Fifth Amendment

. 4, 9, 10, 11, 17, 18

Seventh Amendment

. 5, 9, 11, 14, 15, 16, 19

Tenth Amendment

. 5, 12, 22

Internal Revenue Code

Section 7442

. 6

Section 7482

. 4

United States Code, Title 28

Section 1254

. 4

Cases

<u>Browne, A. P. v. Commissioner,</u> 73 TC 723, Dec. 36,733	14, 19
<u>Cupp, E. A. v. Commissioner,</u> 65 TC 68, Dec. 33,459	20
<u>McElrath v. United States,</u> 102 U. S. 426 (1880)	20
<u>Olshausen v. Commissioner,</u> 60-1 USTC #9142, 273 F2d (9th Cir. 1959), cert. denied 363 U. S. 820 (1960), rehearing denied 363 U. S. 855	19
<u>Roark v. Commissioner, Dec. 39,972,</u> T. C. Memo. 1983-145	13
<u>Swanson, Gloria v. Commissioner,</u> 65 TC 1181, Dec. 33,742	19
<u>Wickwire Jessie L. v. Reinecke,</u> 1 USTC #265, 275 U. S. 101 (1927)	14, 16, 18, 19, 20

OPINIONS OF LOWER COURTS

This case was United States Tax Court Docket Number 6281-81. The Memorandum Findings of Fact and Opinion dated April 13, 1983 is Tax Court Memorandum 1983-208.

This case was No. 83-3313 in the United States Court of Appeals for the Third Circuit. Judgment Order dated February 29, 1984 affirmed the United States Tax Court Decision.

JURISDICTIONAL STATEMENT

The Judgment sought to be reviewed was entered in the United States Court of Appeals for the Third Circuit on February 29, 1984. It was not time stamped.

No motion for rehearing was filed in

the Third Circuit Court; and no extension of time in which to petition for certiorari was requested.

Internal Revenue Code Section 7482 confers jurisdiction on this Court to review the judgment herein by writ of certiorari as provided in Section 1254 of Title 28 United States Code.

CONSTITUTIONAL FOUNDATION

This case is founded upon the United States Constitution:

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be

compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Seventh Amendment

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

STATEMENT OF THE CASE

This case involves federal income taxes. Jurisdiction in the first instance was with the United States Tax

Court pursuant to Internal Revenue Code Section 7442.

The case through the Tax Court and the United States Court of Appeals for the Third Circuit involved tax of \$1,842.08 and the question presented herein. Only facts material to the jury trial issue are stated.

At the commencement of trial in Tax Court, Petitioner Werner Meyer requested a jury trial. Special Trial Judge John J. Pajak denied this request.

On brief, Werner Meyer requested the Tax Court to find fact that he had requested a jury trial. Also on brief, Respondent Internal Revenue Service objected to such a requested finding of fact. The Tax Court noted the request for a jury trial and its denial in its memorandum opinion.

The denial of a jury trial in Tax Court was presented as an issue for review in the Third Circuit Court as well as were the tax issues.

The Appellant's brief in the Third Circuit Court fully argued the jury trial issue. Relief was requested in the form of remand to the Tax Court with specific instructions for a jury trial de novo upon the merits of the case.

The Government brief in the Third Circuit Court did not present an argument on the jury trial issue. It did address the subject by footnote, calling it frivolous.

The Appellant's Reply Brief in the Third Circuit Court counter argued the Government's footnote argument.

On February 29, 1984 the Third Circuit Court issued a Judgment Order

adverse to Werner Meyer in every respect.

No opinion was written and no reasons were stated.

ARGUMENT

OVERVIEW

DENIAL IN A CIVIL MATTER OF TRIAL BY JURY IS UNCONSTITUTIONAL WHERE THE AMOUNT IN CONTROVERSY EXCEEDS \$20.00. IT VIOLATES THE SEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

AS SUCH, THIS COURT'S POWER OF SUPERVISION IS REQUIRED TO CORRECT DEPARTURE FROM JUDICIAL PRUDENCE BY THE UNITED STATES TAX COURT WHICH WAS SANCTIONED BY THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Constitutional Principles

The Fifth Amendment to the United States Constitution guarantees that no person shall be deprived of property without due process of law. This is a

specific limitation on government. Its intent is to protect the people from the government.

Regarding "due process", Alexander Hamilton stated "The words 'due process' have a precise technical import, and are only applicable to the process and proceedings of Courts of justice, they can never be referred to an act of the legislature."

Consequently, the government cannot within the law involuntarily deprive people of property, tax money, without a judicial proceeding; and we have a system of voluntary tax assessment because of the Fifth Amendment due process requirement.

A law requiring payment of tax first with the judicial proceeding in the form of a refund suit would be and is un-

constitutional. Such a law does exist!

The Seventh Amendment to the United States Constitution places the specific limitation on due process of law in civil (common law) suits that the right of trial by jury shall be preserved where the amount in controversy shall exceed twenty dollars.

The case herein is a civil case and the amount in controversy does exceed twenty dollars. Therefore, a right to a jury trial exists. Denial of same is unconstitutional deprivation of property, tax money, without due process of law.

No where in the Constitution is the government granted immunity from the Fifth Amendment or the Seventh Amendment regarding tax matters.

Quite to the contrary, these amendments were deliberately placed in the

Constitution as restrictions on government and as protection for the people.

Furthermore, the Tenth Amendment specifically reserves all power not granted to the government by the Constitution to the states or to the people.

Constitutional principles are absolute and must take precedence over past precedents and case law.

Each and every United States Judge has taken an oath to support the Constitution. Anything less is dereliction of duty.

ALL RIGHTS ASSERTED

The constitutionally based claim of a right to a jury trial was not invented by the Petitioner after losing in Tax Court and in the Third Circuit Court. The right to a jury trial was

asserted in Tax Court, it was asserted and an issue in the Third Circuit Court, and it is the issue here. It has been asserted every step of the way.

Past Precedents and Case Law

The case herein is fully stated under Constitutional Principles above. These principles are absolute and must take absolute precedence. All past precedent and case law that differs is erroneous.

Most precedent and case law favor the Government position. This is error compounded upon error. It must be discussed in order to demonstrate the obviousness of the falsehoods.

The Tax Court memorandum opinion cites Roark v. Commissioner, Dec. 39,972, T. C. Memo 1983-145. This case held that there is no right to a jury trial in Tax

Court and that denial of a jury trial in Tax Court does not violate the Seventh Amendment. This is tantamount to taking the position that a jury trial in tax matters, which is permitted in refund suits, is a legislative grace rather than a constitutional guarantee. Wickwire v. Reinecke, 1 USTC #265, 275 U. S. 101 (1927) and Browne v. Commissioner, 73 TC 723, Dec. 36,733 were cited in support of this basic position.

In Wickwire supra the situation is by no means straightforward. A jury had been empanelled in District Court, the proceeding had been cut-off by the Court and the taxpayer (Wickwire) was ruled against. The Appeals Court then affirmed the District Court end result although for not the same reasons. The Supreme Court reversed the Appeals Court and

remanded the case to the District Court for further proceedings and at the same time stated that there was no right to a jury trial in tax matters.

It is assumed the jury trial issue was raised in the Seventh Circuit Court after the District Court had cut-off the proceedings and ruled against the taxpayer.

It was noted in the Supreme Court decision that the Seventh Amendment was not raised as an issue by the taxpayer and that the government suggested the taxpayer's assignment of error was inadequate in that it was not based on a reference to the Seventh Amendment.

Thus, on its own initiative the Supreme Court stated that the right of a taxpayer to a jury trial in tax matters is not found in the Seventh Amendment.

Since, as a matter of fact, jury trials are presently available in tax cases in Federal District Court refund suits, the stated position of the Supreme Court is tantamount to saying that this is at the legislative grace of Congress rather than by constitutional right under the Seventh Amendment.

The Supreme Court in Wickwire supra went on still further to say "It is within the undoubted power of Congress to provide any reasonable system for the collection of taxes and the recovery of them when illegal, without a jury trial - if only the injunction against the taking of property without due process of law in the method of collection and protection of the taxpayer is satisfied."

The term "due process" is only applicable to the process and proceedings

of Courts of justice. It can never be referred to an act of the legislature (Congress). This means that the government cannot deprive people of property, tax money, without a judicial proceeding. Any provision or attempt to do so through a law or legislative action alone is a violation of the due process requirement of the Fifth Amendment.

Consequently, any requirement that the taxpayer first pay an assessment, which may even be completely arbitrary, prior to the commencement of a judicial proceeding is in violation of the Fifth Amendment.

As the law does require payment of the tax before beginning a refund suit in District Court, where a jury trial may be had, this law is just as unconstitutional as the denying of a jury

trial in Tax Court. In fact, it unfairly discriminates against those who cannot pay first. And this discrimination is in a day and age when almost any other discrimination is a violation of civil rights and not tolerated. Apparently it is all right for the government to discriminate, but it is not all right for the people to discriminate.

Now, regarding the Supreme Court comment immediately above in Wickwire supra concerning due process, what the Court said is not true! Our constitutional government is a system of checks and balances. It is the duty of the Courts to protect and defend the Constitution; and when necessary, it is their duty to declare acts of Congress unconstitutional and strike them down. The exact reasoning regarding the Fifth

and Seventh Amendments to the United States Constitution has been discussed above under Constitutional Principles.

In Browne supra, it is simply stated there is no right to a jury trial based on Swanson v. Commissioner, 65 TC 1180, Dec. 33,742.

In Swanson supra, the Tax Court discussed at length its position regarding jury trials. The major points were:

1. There is no constitutional right to a jury trial in Tax Court.

Wickwire supra.

2. Deprivation of a jury trial is elected by the taxpayer through filing in Tax Court rather than first paying and then suing for a refund. Olshausen v. Commissioner, 60-USTC #9142, 273 F2d (9th Cir. 1959), cert. denied

363 U. S. 820 (1960), rehearing denied 363 U. S. 855.

3. It is well settled that there is no entitlement to a jury trial in Tax Court. Cupp v. Commissioner, 65 TC 68, Dec. 33,459.
4. Congress did not provide for jury trials in Tax Court.
5. The United States due to Sovereign Immunity can provide both the forum and procedure for it to be sued. McElrath v. United States, 102 U. S. 426 (1880).

The above points will now be discussed.

Number 1 has already been discussed under Wickwire supra.

Number 2 is adequately handled by the discussions above regarding due

process.

Number 3 must mean that there is no entitlement to a jury trial in Tax Court because we have never let a taxpayer have a jury trial in Tax Court, we have always ruled that way, and we don't plan to change now regardless of the absolute facts. This tack manifests no adherence to principle.

The frequency with which this jury trial question is raised indicates much dissension with the interpretation being given the Constitution and the law by the Government and its Courts.

Number 4, that Congress did not provide for jury trials in Tax Court, is without foundation. It is the duty of the Courts, particularly this Court, to protect and defend the Constitution. When necessary, acts of Congress must be

declared unconstitutional and struck down.

Each and every United States Judge has taken an oath to support the Constitution. There was nothing in that oath concerning extricating Congress from its own iniquity.

Item 5, Sovereign Immunity, also is erroneous. The conceptual error here is that a suit in Tax Court or even a refund suit in Federal District Court is a suit against the government. The truth is that the government is placing the taxpayer in the position of being deprived of his property unless he files suit. No other organization or individual has that kind of power, and nowhere in the Constitution is that kind of power granted to the government. In fact, the Tenth Amendment to the Constitution specifically reserves all

power not granted to the government by the Constitution to the states, or to the people.

In reality, a dispute in our system of voluntary assessment and payment of taxes is and should be a suit against the taxpayer by the government. In this type of suit the concept of Sovereign Immunity does not apply; and the government and the taxpayer would be on even ground before the law.

This system we now have is a complete perversion of the intent of our founding fathers, and it should be struck down. That which they greatly feared has come to pass. Exactly who is our government representing? The people?

Therefore, the concept of Sovereign Immunity allowing the government to provide the forum and the procedure

for it to be sued does not apply to tax matters and the collection of tax.

Conclusions

For the reasons above stated and discussed, the supervision of this Court is required in this most urgent question. The Court should welcome an opportunity to examine and protect the constitutional rights of the people. The judicial imprudence of the Tax Court sanctioned by the Third Circuit Court must be corrected.

To the best knowledge of the petitioner, the exact question herein regarding the right to a jury trial in Tax Court has not been before this Court before.

APPENDIX

Judgment Order

Review of the following Judgment Order of the United States Court of Appeals for the Third Circuit is sought:

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 83-3313

**WERNER MEYER
P.O. Box 332
Hatboro, PA 19040**

v.

COMMISSIONER OF INTERNAL REVENUE

Werner Meyer, Appellant

Tax Court Docket No. 6281-81

**ON APPEAL FROM THE DECISION OF
THE UNITED STATES TAX COURT**

Submitted Under Third Circuit Rule 12(6)
February 29, 1984

BEFORE: SEITZ, SLOVITER, AND ROSENN,
Circuit Judges.

JUDGMENT ORDER

After consideration of the contentions raised by appellant and essentially for the reasons given by the Tax Court, we conclude that its determinations are not clearly erroneous, it is

ADJUDGED AND ORDERED that the decision of the Tax Court be and is hereby affirmed.

Costs taxed against appellant.

By the Court,

/s/ Seitz
Chief Judge

ATTEST:

/s/ Sally Mrvos
Sally Mrvos, Clerk

DATED: FEB 29 1984

Memorandum Findings of Fact and Opinion

The United States Tax Court Memorandum Findings of Fact and Opinion is excerpted to the extent that it is relevant to the issue herein:

T. C. Memo. 1983-208

UNITED STATES TAX COURT

WERNER MEYER, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 6281-81. Filed April 13, 1983

Werner Meyer, pro se.

Russell K. Stewart, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

DAWSON, JUDGE: This case was assigned to and heard by Special Trial Judge John J. Pajak pursuant to the provisions

of General Order No. 6, 69 T. C. XV
(1978). The Court agrees with and adopts
the Special Trial Judge's Opinion which is
set forth below.

SERVED APR 13 1983

OPINION OF THE SPECIAL TRIAL JUDGE

PAJAK, Special Trial Judge: . . .

3 (footnote)

We denied petitioner's demand for a
jury trial since there is no right to a
jury trial in the Tax Court. See Roark v.
Commissioner, T.C. Memo. 1983-145.

. . .
Decision will be entered
for the respondent.

Decision

The Decision of the United States
Tax Court follows:

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

<u>WERNER MEYER,</u>)	
Petitioner,)	
)	
v.)	Docket No.
)	6281-81
COMMISSIONER OF INTERNAL)	
REVENUE, Respondent.)	

DECISION

Pursuant to the determination of the
Court, as set forth in its Memorandum
Findings of Fact and Opinion (T.C. Memo.
1983-208) filed herein on April 13, 1983,
it is

ORDERED AND DECIDED: That there is
a Federal income tax deficiency due from
petitioner for the taxable year 1978 in

the amount of \$1,842.08.

/s/ Howard A. Dawson Jr
Howard A. Dawson, Jr.
Judge

Entered: Apr 18 1983

Judgment Under Review

The Judgment Order first appearing in this Appendix is the Judgment Order for which review is sought. There are no orders concerning rehearing.